

REMARKS

There are 23 Claims pending in the present application. Claims 10 and 20 are withdrawn as directed to a non-elected species. Claims 1-4, 7, 8, 11-14, 17, 18 and 21-23 stand rejected under 35 U.S.C. § 102(e) as anticipated by Caeran et al. (US 2004/0107605 A1). Claims 5, 6, 9, 15, 16 and 19 stand rejected as obvious over Caeran et al., in view of Soo (US 6,612,592). Claims 23 is also rejected as indefinite. The applicants thank the Examiner for his thorough review of this matter.

Claim 23 Indefiniteness Rejection

The Examiner has correctly noted that superfluous language was inadvertently appended to Claims 23. The error is corrected by amendment herein, and the Examiner's assistance is gratefully acknowledged.

Caeran et al.

Caeran et al. was filed in the United States on December 2, 2003 (claiming priority to an Italian application filed on December 9, 2002). According to a search of the Delphion database conducted by the office of the undersigned, no corresponding international application was filed for Caeran et al. The prior art date under 35 U.S.C. § 102(e), therefore, is December 2, 2003.

The present application was filed on January 30, 2004. An Inventor's Declaration Under 37 CFR 1.131 is enclosed herewith, executed by co-inventor Darrin John Haugen, and including an Exhibit A showing two pages from Haugen's invention notebook dated October 28, 2003. The enclosed declaration establishes that the present invention was made before the prior art date for Caeran et al. Moreover, it is believed to be obvious by inspection that Caeran et al. does not claim the same patentable invention as is claimed in the present application.

In particular, the inventor notes that he conceived of the present invention, i.e., a size-adjustable in-line skate having a toe cup with a slit extending along a length of the floor, and size adjusting by elastically deforming the toe cup, prior to December 2, 2003. The page from his invention notebook, dated October 28, 2003 shows a toe cup that is remarkably similar to the toe

cup shown in FIGURES 11-15 of the present application, including notes indicating "as toe slides one side moves in and out to change width." Arrows are included in the sketch to show the operation of the invention. The inventor also indicates the attachment [to the frame] "could use t nut and slot or captured rail system", and shows a cross-section that accurately reflects the embodiment shown in FIGURE 12 of the present application. These sketches even disclose the "arrest hook so toe cap cannot be pulled off of base," which are also shown in FIGURE 12 of the present application. An earlier page from his inventor's notebook, dated October 13, 2003, shows the same concept, with a much wider slot, and the fore and aft motion of the toe cup adjusting the width. It is believed that the inventor's declaration and invention notebook records clearly show the inventor was in possession of this invention prior to December 2, 2003.

It is believed, therefore, that Caeran et al. is not prior art to the present invention.

Claims 1-9, 11-19 and 21-23 are therefore believed to be in condition for allowance. Also, withdrawn Claims 10 and 20 are believed to be allowable as depending from an allowable generic base claim. Entry of the amendments and a positive disposition is respectfully requested.

If any questions or issues remain that might be resolved telephonically, the Examiner is encouraged to call the undersigned directly.

Respectfully submitted,

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